

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSIONHDCF
NEW DELHI**

JUDGEMENT PRONOUNCED ON: 07/10/2025

FIRST APPEAL NO. 75/2013

(Against the Order dated 14th March 2012 in Complaint 272/2000 of the State
Consumer Disputes Redressal Commission Maharashtra)

WITH

IA/5903/2019 (Placing Addl. Documents)

IA/18389/2019 (Condonation Of Delay)

Shivajirao More, R/o Rethareharnax, Taluka-Walwa, District-Sangli, Maharashtra

.....Appellant(s)

Versus

1. Siddhanath Sawant, Address - Kadegaon, Taluka-Khanapur, District-Sangli Maharashtra
2. M/s Mangalam Engg. Works, Address - Through Prop. Mr. Rajesh Joshi, 402 Shivadarshan Co-Op Housing Society, Bhatwadi, Ghatkopar (W), Mumbai- , Maharashtra

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

For the Appellant : Mr. Mahaling Malikarjun Pandarge, Advocate

For the Respondents : Mr. Anand Patwardhan, Advocate for R-1
R-2 Deleted Vide Order Dated 11.02.15

ORDER

PER BHARATKUMAR PANDYA, MEMBER

1. This is the appeal questioning the correctness of the impugned order of the State Commission wherein the complaint has allowed and the appellant has been directed to refund the consideration of Rs.9.5 lakhs with interest and cost due to deficient service of the appellant in not supplying the machinery as was agreed. The brief facts as of the case are that the OP-1 approached the complainant and suggested the idea of starting a grey board manufacturing unit, describing it as a family activity recognized by the Khadi & Village Industry Commission. OP-1 assured the Complainant that he had all the technical know-how and machinery required to set up such a unit. OP-1 was running a grey board manufacturing unit and would be in a position to supply, erect, install, and commission the complainant's unit. Complainant was given to understand that OP-2 (Manglam) was

the main company having licenses for manufacture of machinery and was in joint venture with OP-1, and therefore all quotations, bills, and payments were to be issued in the name of OP-2. OP-1 provided a quotation from OP-2 dated 17.09.1999 and further explained that OP-2 had a business tie-up with him, having facilities for manufacturing machinery, which according to him was only an internal arrangement between them. Relying on such assurances and the promise that the unit would be commissioned by 01.05.2000, complainant arranged an amount of ₹9,50,000/- by pooling his savings and raising a loan of ₹7,00,000/- from the Maharashtra State Co-operative Bank Ltd., Pune Branch. To further reassure the complainant, OP-1 executed an agreement dated 10.03.2000 reconfirming the receipt of the amount and his responsibility to commission the unit by 01.05.2000. However, despite receiving the full consideration, OPs failed to supply the machine. Instead, OP-1 induced the Complainant to sign certain forms for obtaining an electricity connection from MSEB and managed to get a false inspection report dated 13.10.1999 prepared by an MSEB-recognized contractor, showing that the machinery was already installed. On the basis of this false report, MSEB sanctioned 15 HP electricity connection, but in fact no machinery had ever been delivered or installed, thereby putting the complainant in a precarious situation. The complainant thereafter approached Shree Mahalakshmi Industries (SMI), which had a good reputation, and purchased grey board machinery at a total cost of ₹6,03,528/- under bills dated 15.06.2000, 02.07.2000, 27.07.2000, and 05.08.2000. SMI installed the machinery, but when they sought electricity connection, MSEB raised an objection citing the earlier false inspection report already on record. After incurring further expenses and overcoming these hurdles, complainant managed to get the electricity connection. Though the unit eventually began functioning, he was burdened with heavy loans. Left with no option, the Complainant filed the complaint before the State Commission, seeking refund of ₹9,50,000/- with 18% interest p.a. from 01.05.2000 till realization, compensation of ₹2,10,000/- towards interest paid to the bank, ₹50,000/- for mental agony and physical hardship, ₹20,000/- towards litigation costs.

2. OP-1 (O.P.) in reply before the State Commission, stated that the complaint is misconceived, frivolous, and devoid of merit. O.P. categorically denied ever being engaged in the business of selling or supplying grey board machinery, or entering into any oral or written agreement with the complainant for supply or installation of machinery. It was denied that the complainant ever placed an order with them or that

they ever demanded or received payments from him, except for two demand drafts (for Rs. 1.4 lakhs) which were accepted only on behalf of Manglam Engineering Works and were merely routed through them for the sake of convenience at the complainant's own request. OP emphasized that the total amount of ₹9,50,000/- was paid by the complainant entirely to Manglam Engineering Works, not to him, and that they never accepted any responsibility to install machinery. The so-called agreement dated 10.03.2000 relied upon by the complainant was stated to be fabricated and that the complainant misused a blank signed paper stolen from their office to prepare this false document. OP further pointed out that since the machinery had already been installed in October 1999 by Manglam Engineering Works, there was no occasion for executing such an agreement months later. The alleged witnesses to the document are friends of the complainant and their affidavits, being by interested persons, cannot be relied upon. In October 1999, Manglam installed the machinery at the complainant's site, which was duly inspected on 13.10.1999 by an MSEB-licensed supervisor. Because of close business relations, O.P. and Manglam sometimes helped each other monetarily, and for convenience, Manglam even used O.P.'s factory address for correspondence. However, O.P. had no contractual obligation towards the complainant. The present complaint, therefore, is an attempt to take undue advantage of O.P.'s name on demand drafts and his signatures misused from stolen papers, with the ulterior motive of extracting money from O.P. and avoiding repayment of bank loans. O.P. also raised a plea that since there was no trader-consumer relationship between the complainant and him, the complainant is not a consumer under the Consumer Protection Act, and the State Commission has no jurisdiction. He prayed that the complaint be dismissed with costs.

2.2 OP-1 appellant filed an additional written statement in response to amended complaint on 15.11.2008. OP-1 relied therein on RTI informations received from MSEB, RTO, Sales Tax, and Municipal Council, which as per OP-1 established that the machinery already installed by OP-2 (Manglam) was inspected by MSEB engineers, and the complainant's claim of later procurement from Shree Mahalakshmi Industries is false establishing thereby that after the machinery was fully installed by Manglam in October 1999, the alleged agreement dated 10.03.2000 is *ex facie* fabricated and infructuous and that the complaint is vexatious. OP-1 also pointed out from RTI replies that in the project report submitted by the complainant to the District Industries Centre, he was described only as a "technical consultant"

and not as supplier, showing there was no consumer relationship. As per OP-1, complainant has misused acquaintance with OP-1, fabricated documents, and filed a vexatious complaint only to extract money, and therefore urged for dismissal with compensatory costs.

3. OP-2, M/s Mangalam Engg. Works, was belatedly joined as in the complaint as an OP by way of amended complaint and filed its version. As noted by the State Commission, though the complaint is belated against OP-2, and therefore not maintainable, in reply OP-2, Respondent 2 in this appeal, has essentially supported the case of the complainant in as much as it is stated therein that the amounts as mentioned and receipted by it were received by him, but the same were made over to the OP-1 who in fact had undertaken to provide the services and who was allowed by OP-2 to use its license and credentials. OP-2 also filed its Bank Statement showing the receipt of Rs. 7 lacs DD from the complainant and payments therefrom to OP-1. Before us in this Appeal, the appellant though joined OP-2 as respondent 2, the service of notice could not be effected by it and accordingly prayed, by way of an IA 668 of 2013 and accompanying affidavit, that the OP-2 be deleted as party and that "there is no dispute to his (Mangalam's) say" which was allowed vide order dated 11.02.2015. As such, OP-2's version before the State Commission and factual as also evidentiary support to the complaint, including the fact that all payments of consideration of Rs. 9.5 lacs in fact were effectively received by the appellant and that the appellant had undertook to provide the services, have thus attained finality.

4. After hearing the submissions of both parties and carefully examining the evidence and record, the State Commission held that the complainant had duly proved payment of ₹9,50,000/- to OP-1 including Rs. 7 lacs which though made through DD to OP-2, as seen from OP-2's Bank Statement, is evidenced to have been made over to OP-1, and had also proved the execution of the agreement dated 10.03.2000, whereas the OP-1 failed to supply or install the machinery, and the defence of forgery of the said document was unsupported. The Commission, therefore, concluded that the OP-1 were liable for deficiency in service and unfair trade practice. The order of State Commission is reproduced herein below:

"It is the case of the complainant that since opponent no.1 did not supply the machinery, he got it purchased and installed from M/s.Mahalaxmi Traders owned by Mr.Manohar Jadhav, supra on 12/03/2010.

As far as criticism of opponent No.1 on the evidence of Mr.Manohar Jadhav is concerned, we find it is not inspiring any confidence. As far as discrepancy in the sales tax number of Mr.Manohar Jadhav is concerned, he did explain the same in his affidavit

and said evidence stands on good footing and remain undisturbed by so called information obtained by opponent no.1 under the Right to Information Act. However, the supply and installation of machinery by Mr.Manohar Jadhav is not relevant to decide the present controversy between complainant and opponent no.1.

Complainant has given the particulars of payments made of '2,50,000/- from time to time and lump sum payment of 7,00,000/-. Said finds corroboration from the documents placed on record in a form of receipts, demand draft, etc. Opponent himself acknowledged those payments and his liability to supply and install the machinery in question by executing the agreement dated 10/03/2000, signed by both the complainants and opponent no.1 as well as by him in presence of attesting witnesses. Said agreement is on the stamp paper which was purchased on the same day for and on behalf of opponent no.1 by the complainant. Opponent himself admits the signature on the said agreement but according to him, complainant stolen the signed paper from his office and falsely prepared the said agreement. Looking to the nature of the agreement which is of three pages on the stamp paper uniformity of the spaces between the typed lines and the fact that execution of the said agreement by opponent no.1 is further affirmed by the attesting witnesses Mr. Avinash Thorat, Mr.Vikas Sutar. Mr.Shashikant Patil and Mr.Chandrakant Nayak and further finding that there is no reason to disbelieve evidence of these attesting witnesses; we find that theory of the complainant, supra, about this agreement cannot be believed. Agreement is well established and it corroborates and support case of the complainant and wherein acknowledging the receipt of payment of '9,50,000/-, opponent no.1 further acknowledges his liability to supply and install the machinery to manufacture grey boards. It is his own liability and not of opponent no.2.

Opponent no.2 virtually supports the case of the complainant. Opponent no.1 tried to file sur-rejoinder dated 15/11/2008 in reply to the written version of opponent no.2. But considering the totality of the circumstances, the fact that opponent no.2's version also finds corroboration from his bank statement about tendering amount of 7,00,000/- to opponent no.1, further considering the fact that part of the payment i.e. of ' 1,00,000/- on 21/08/1997 and '40,000/- on 13/10/1997 were also acknowledged as received from complainant by opponent no.1, and further failure on the part of opponent no.1 to show that these payments if really as alleged by him, the transaction was with opponent no.2, receiving the payments but failure to pass on these payments to opponent no.2 further destroys the case of opponent no.1. Thus, we find that case of complainant is well established since opponent no.1 failed to supply and install the machinery and thereby failed to discharge his contractual obligation. The deficiency in service on his part within the meaning of Consumer Protection Act, 1986 is well established.

In view of the discussion above, there is no case established as against opponent no.2. Besides that considering the date of impleading it as a party in the year 2003; the consumer complaint as against it may be time barred, since it is filed beyond two years after filing the consumer complaint on 27/06/2000. No condonation of delay application was made as against opponent no.2.

As far as relief of compensation on mental agony, inconvenience, etc. are concerned, we find that the complainant failed to support the same by any evidence. We further find that since we intend to grant interest over the refund of consideration @ 18% p.a., there is no need to award any separate compensation for alleged mental and physical inconvenience for the complainant. In the background of the circumstances, we quantify the costs of '25,000/-. For the reason stated above, we hold accordingly and pass the following order:-

ORDER

1. Complaint is partly allowed.
2. Opponent No.1-Shri Shivajirao D.More do pay 9,50,000/- complainant along with interest @ 18% p.a. from 01/05/2000 till its realization.
3. Opponents to bear their own costs and opponent No.1- Shri Shivajirao D.More do pay '25,000/- as costs to the complainant.
4. Copies of the order be furnished to the parties."

5. The appellant/OP-1, being aggrieved by the impugned order dated 14.03.2012, submits that the said order is erroneous, perverse, contrary to law, and liable to be set aside. The following substantive grounds are urged:

- a) The complainant is not a "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986, as the machinery was purchased for running an industrial grey board unit employing 10–12 workers for commercial profit, not for livelihood by self-employment. Hence, the complaint was not maintainable.
- b) The appellant supplied and installed the machinery at the complainant's site in October 1999, as proved by:
 - i. Inspection report dated 13.10.1999 by licensed MSEB supervisor.
 - ii. Site inspection dated 15.10.1999 by MSEB Junior Engineer.
 - iii. Electricity connection granted on 26.06.2000 for operating the unit. These official records conclusively establish installation, which the State Commission ignored.
- c) The complainant falsely claimed to have purchased machinery from Shri Mahalaxmi Industries, but:
 - i. Alleged bills for such purchase are fabricated; vehicle numbers mentioned were of a two-wheeler and a trawler, incapable of transporting machinery.
 - ii. Affidavit of Shri Mahalaxmi Industries' partner confirmed no machinery was supplied. This vital evidence was wrongly ignored.
- d) The State Commission disregarded cogent evidence filed by the appellant, including affidavits, inspection reports, applications, and written statements, while relying on unreliable and fabricated documents of the complainant.
- e) The State Commission failed to frame proper issues and did not return findings on specific contentions raised in the pleadings, rendering the impugned order unsustainable.

6. The counsels for the parties have been heard and records including the written arguments filed by the parties have been carefully perused. The first contentions on behalf of the appellants is that the complainant is not a "consumer" under the Consumer Protection Act, 1986, since the machinery was purchased for commercial/industrial purposes and not for self-employment. It is also the contention that that the machinery was duly supplied and installed by the Appellant/Mangalam at the complainant's site in October 1999, as proved by MSEB inspection reports, electricity connection records, and supporting affidavit, which the State Commission failed to appreciate while wrongly directing the refund of ₹9,50,000/- with interest and costs. The Appellant further submits that along with IA/5903/2019 on 08.04.2019, additional documents marked Annexures A-10 to A-19 have been placed on record, including the copies of the judgments by the JMFC acquitting the complainant and also of the Additional Sessions Judge, Islampur, in Criminal Appeal No. 23/2017 arising out of RCC No. 201/2002 filed by the Complainant against the Appellant. It is therefore the contention that the appellant has been acquitted as further confirmed also by the appellate authority holding that the prosecution/complainant failed to prove the nexus of the accused with Mangalam Engg. works as also any cheating or dishonest intent on the part of the appellant. The findings of the competent criminal courts is of direct relevance to the present proceedings, as it

reinforces the Appellant's contention that the Complainant's allegations of non-supply of machinery are false, and that the transaction did not involve any fraudulent or dishonest intention on the part of the Appellant. The impugned order of the State Commission, which proceeds on the assumption of deficiency in service and unfair trade practice without appreciating the surrounding circumstances and evidence, thus stands contradicted by the concurrent findings of the criminal courts. Therefore, the order under challenge deserves to be set aside, as the Appellant cannot be held liable when both civil and criminal records demonstrate that machinery was supplied and no fraudulent act was committed. The Appellant contended that there exists no privity of contract between the Complainant and the Appellant. The alleged agreement dated 10.03.2000 (at page 70 of additional documents) is false, fabricated, and forged by the Complainant with the sole object of initiating consumer proceedings. The stamp paper of ₹100/- was admittedly purchased by the Complainant himself, and the alleged contract consists of three pages, with the Appellant's signature appearing only on the last page and not on all three pages. Importantly, no date of execution is mentioned. Even the witnesses to the agreement, who are admittedly close friends of the Complainant, though filed affidavits in support of the Complainant, their testimony was discredited in criminal proceedings, where witness Vikas Sutar admitted in cross-examination that the agreement was never executed before him, and that no cash or demand draft was handed over to the Appellant in his presence (paras 18–19 of order dated 17.06.2017 in RCC No. 201/2002, at pp.55–69 of additional documents). Consequently, the JMFC Islampur acquitted the Appellant, holding that the alleged agreement was not genuine and that the Complainant's case based thereon was not proved at all. The Appellant further attempted to contend through documentary evidence that payments were made by the complainant only to OP-2, M/s Mangalam Engineering Works. Specifically, on 21.08.1997 a demand draft of ₹1,00,000/- was deposited by the Complainant in the Appellant's account, which was transferred to OP-2 against a receipt (page 38 of additional documents). Similarly, a demand draft of ₹40,000/- was deposited on 13.10.1997, also routed to OP-2 (page 39). In addition, the Complainant paid ₹1,10,0,000/- in cash to OP-2, against proper receipts (page 40–42). Further, the Complainant raised a loan of ₹7,00,000/- from Bharati Sahakari Bank, the DD in the name of OP-2 of was given directly to OP-2 (page 43). It is therefore evident that the entire consideration was paid to OP-2, and

OP-2 has installed the machinery at the Complainant's unit at MIDC Kadegaon in October 1999. Hence, the fabricated agreement dated 10.03.2000 has no relevance, as no party would execute such a contract 5-6 months after receiving payment and completing installation. The Appellant highlighted that the Complainant himself amended the original complaint after the filing of the written statement, only to fill lacunae by adding OP-2, thereby admitting that the consideration was paid to OP-2 and that OP-1/Appellant was not the supplier. This reinforces the Appellant's case that there was no consumer-service provider relationship between the Complainant and the Appellant, and the complaint is not maintainable. To disprove the Complainant's claim of subsequently purchasing machinery from M/s Mahalaxmi Industries, Ichalkaranji, the Appellant relied on RTI replies and records from government offices. Information from the Sales Tax Office confirmed that the registration number on the bills produced by the Complainant belonged to "Dhankrupa Kirana Stores" and not Mahalaxmi Industries (page 37). The Municipal Council, Ichalkaranji, confirmed that no such Mahalaxmi Industries existed. Even letters sent by RPAD to the address mentioned in the Complainant's bills were returned unserved (pages 16-17). Further, RTO Kolhapur's RTI replies revealed that the vehicles allegedly transporting the machinery were either motorcycles or trailers incapable of carrying heavy industrial machinery (pages 49-53). Thus, the Complainant's story of having purchased machinery from Mahalaxmi Industries in June to August-2000 was a concoction supported by fabricated documents. The Appellant also placed reliance on RTI documents from MSEB, which show that the Complainant had applied for electrical connection in October 1999, and inspection was carried out on 15.10.1999 by MSEB officials (page nos. 20-21, 23-32). The records specifically noted that seven workers were employed at the unit, showing that it was a commercial establishment and not for self-employment or livelihood. Thus, the Complainant cannot fall under the definition of "consumer" under the Consumer Protection Act. RTI records from the District Industries Centre, Sangli, reveal that the Complainant himself submitted a project report for subsidy, where OP-1/Appellant was named only as a "technical consultant" while OP-2 was listed as the "vendor of machinery" (pages 9-12). The balance sheet as on 31.03.2001 annexed therein also shows ₹1,40,000/- due from OP-1/Appellant and ₹8,10,000/- due from OP-2, thereby disproving the Complainant's claim against the Appellant. Finally, the Appellant contends that the present case involves disputed questions of

fact and allegations of fraud and forgery, which cannot be adjudicated by a consumer forum. Reliance is placed on Supreme Court decisions in Civil Appeal No. 7289 of 2009 (decided on 27.03.2023) and Civil Appeal Nos. 1831–32 of 2022 (decided on 07.03.2022), which hold that consumer fora cannot decide matters involving allegations of fraud, cheating, or highly disputed factual issues. The Appellant prays that the impugned order be set aside, and the complaint filed by the Complainant be dismissed with costs.

5.3 Per contra, the Respondent No.1, the Original Complainant, contended that to supplement his meagre agricultural income he engaged the Appellant (OP-1) to install the required machinery up to the stage of readiness for operation. Respondent No.2 (OP-2), M/s Mangalam Engineering Works, allowed the use of its sales tax registration for the transaction and provided a quotation. Relying on their assurances, complainant invested ₹2,50,000/- from family savings and took a loan of ₹7,00,000/- from Bharti Co-op Bank Ltd. However, instead of honouring their commitments, the Appellant and Respondent No.2 failed to provide the machinery and deceived him, leaving him under a heavy debt burden, causing immense financial loss, mental trauma, and social hardship. When the Appellant failed to install the machinery, he had to borrow further from friends and family to procure machinery from M/s Mahalaxmi Industries at a lower cost of ₹6,03,528/-, despite already suffering huge losses and harassment. It is stated that not only the status as consumer was not disputed before the State Commission, there is no evidence on record to establish that this small village industry proposed to be set up by the complainant was not for self-employment for livelihood, nor does the complaint involve any disputed questions of fact which are attempted to be created by the appellant alone without there being any substance therein. Relying on State Commission's order, the respondent has contended that the State Commission has rendered factual findings that (a) the agreement dated 10.03.2000 is validly and duly executed (b) the payments have finally been received by the appellant (c) The machinery has not been provided within the stipulated time (d) The subsequent purchase of Machinery by the respondent from M/s Mahalaxmi, and the attempt of the appellant to show that no such purchase was made, is irrelevant for deciding the moot issue of deficiency in service of the appellant in view of non-fulfilling of the obligation under agreement dated 10.03.2000. It is further submitted that the criminal appeal of the appellant was dismissed not on merits but on the ground that the

dispute is essentially of civil nature and that the complainant had already received relief from the State Consumer Commission in Consumer Complaint. No assistance in law can be available to the appellant from these findings to dislodge the sound factual findings of the State Commission. It is contended that the Appellant deliberately concealed 15 crucial documents from this Commission which were part of the original complaint record like MSEB connection report, bank certificates showing payment of 19% interest on loan, affidavits of witnesses to the agreement, RTI information confirming sales tax registration of Mahalaxmi, and affidavits of co-witnesses to the agreement dated 10.03.2000. This concealment shows that the Appellant has approached this Commission with unclean hands only to delay compliance with the order of the State Commission. The Respondent highlights that the Appellant fabricated false MSEB inspection reports dated 13.10.1999 and 26.05.2000 to create an impression of installation of machinery, whereas the agreement dated 10.03.2000 itself proves that no machinery had not been installed by then. On 03.06.2000, Respondent No.1 wrote to the Appellant about his default. Only after installation of machinery by Mahalaxmi Industries, did MSEB issue its genuine inspection report dated 29.07.2000, which was concealed by the Appellant in his appeal. This establishes the malafide intention and fraudulent conduct of the Appellant. It is further submitted that the bank's certificate dated 23.08.1999 evidences the heavy interest payments made. The State Commission has duly considered all material aspects before rendering the decision, and hence, this appeal being without merit, need to be dismissed with costs.

6. Having duly considered the entire material and contentions on behalf of the parties, first, we find no merit in the contention of the appellant to the effect that the complainant does not qualify to be a consumer under Section 2(1)(d) of the CP Act, 1986. It is the averment in the complaint that the complainant is an educated unemployed youth who for augmenting his agricultural income proposed to set up a small scale industry promoted by Government. There is no evidence on record to conclude that the endeavour of the complainant is for any large scale commercial enterprise or that it is not for earning his livelihood. There was no such plea in the reply filed by the appellant before the State Commission. We also do not agree with the contention on behalf of the appellant that the State Commission could not have dealt with the complaint in view of "highly disputed questions of fact", in as much as the complainant is right that the State Commission has duly considered the evidence

on record and that no infirmity therein can be alleged merely on the ground of disputed questions of fact which in fact are the laboured attempts of the appellant which must fail. There is also no merit in the contention that the complainant had no privity of contract with the appellant. Not only the direct payment of DD of Rs. 1.4 lacs and cash of Rs. 1.1 lacs is admittedly received by the appellant, but as per reply of OP-2 (Mangalam) before the State Commission, all the payments received by OP-2 were also made over to the appellant, which averments have become binding to the appellant in view of averments in IA/668/2012 and accompanying affidavit filed by the appellant praying for deleting M/s Mangalam as party before this Commission and stating in the affidavit that there is "no dispute with the say of Mangalam". Thus, we have no reason to find any error in the State Commission's findings of privity of contract from the time of payments by the complainant and also of valid obligations of the appellant under the agreement dated 10.03.2000, and of failure of the appellant in carrying out those obligations, and in consequent finding of deficient service. The State Commission has rightly found the agreement dated 10.03.2000, though wrongly and unsubstantiatedly disputed by the appellant, to be credible, reliable and not successfully repelled by the appellant. In reply before the State Commission, the appellant disputed the receipt of consideration and the execution of the agreement and thus also any obligation under the agreement to provide the services of commissioning of the machinery as envisaged under the agreement. The appellant also attempted to dispute the claim of the complainant of "non-installation" by relying on MSEB agency inspection report received through RTI, to plead that not only the successful installation of the machinery was achieved by OP-2, but electricity connection was also provided by MSEB after inspection by one Sh. Hindurao Hanmantrao Yadav, an alleged authorised agency, and after paying the respective charges of Rs.37620/- on 06.10.1999 (Page 25 of IA 5963 of 2019). The complainant, to repel such averments, apart from alleging that such MSEB reports are created wrongly by the appellant by wrongly obtaining his signatures on the blank forms for allegedly accelerating the process of early operationalization of the machinery pending to be supplied by OP-1, also produced evidence of subsequent purchase of machinery from M/s Mahalaxmi Industries for Rs.6,03,528/- during 15.06.2000 to 05.08.2000 and of power connection obtained thereafter, which fact also, subsequently was attempted to be repelled by the appellant by way of producing further RTI information about the veracity of such subsequent purchase of

machinery from M/s Mahalaxmi Industries. The State Commission, however, after finding credibility in the agreement dated 10.03.2000 on the basis of the the fonts, the line-spacing and the overall structure of the document, on the third page of which, the signature was not denied by the appellant, held, in our opinion rightly so, that the subsequent purchase or otherwise of the machinery by the complainant is not at all relevant, and further, that the complainant's case finds full corroboration and support from the case put up by the OP-2 (Mangalam), including the receipt of the full payments by the appellant, and therefore, the complaint is well established and there is clear deficiency in service in not carrying out the obligations thereunder. It is thus established on record after perusal of the receipt dated 17.10.1997 for Rs.2 lakh issued by the appellant (page no.10 of complainant's reply affidavit), the averments in OP-2 reply before the State Commission particularly in para 3 (iii) and (iv) read with the copy of Bank Statement on page 19 of the said affidavit, that the appellant duly received the full payment of Rs. 9.5 lacs, and has executed the agreement dated 10.03.2000. No categorical averments have been made by the appellant in the reply to the complaint, about how and when the respective machinery were supplied by the appellant either before the said agreement or after the said agreement but before the outer time limit of 01.05.2000. As a matter of fact, the reply before the State Commission in para 9(c) mentions, without any supporting evidence, that M/s Manglam Industries "installed the machinery at or about the time of release of the last installment of Rs. 7 lakh by DD dated 12.10.1999". But such facts have been completely denied in reply by M/s Manglam which denial, along with all other averments of Mangalam corroborating with the complaint, now stands accepted by appellant. We also find it curious that the efforts and focus of the appellant either in the reply to the complaint before the State Commission or even in the present appeal, is not on explaining or establishing his own case, namely, as to why he received the payments of Rs. 2.5 lacs, how the amount was invested for installation either by him or by OP-2, how the machinery parts or components were purchased and transported and installed by him or by OP-2, or how the installation was completed, and the focus, on the contrary, is merely on establishing, not by direct but only by indirect evidence of MSEB inspection reports, to persuade both the Commissions to infer installation of subject machinery by M/s Mangalam, therefrom within time. If after receipt of the money, the corresponding work were carried out as claimed by the appellant, neither the agreement dated 10.03.2000 nor the complaint

would have arisen. If OP-2 Mangalam was in fact liable to provide the machinery, there has to be credible explanation and evidence with the appellant as to the reason for admitted acceptance of Rs. 1.40 lacs DDs and Rs. 1.1 lacs cash from the appellant, and also evidence of Bank statement showing the payments thereof made by him to Mangalam. If the appellant himself did undertake and did carry out the work before the allegedly fabricated agreement dated 10.03.2010, the evidence thereof, if furnished, would have successfully supported the appellant's case of alleged forged nature of the agreement, but no such evidence is filed by the appellant. If the obligation even under the agreement was in fact carried out within the time, there is no reason why the appellant would not have enough direct, credible and contemporaneous evidence of such installation. No such evidence has come on record either before the State Commission or before us. Therefore, we are inclined to agree with the State Commission's findings. We also agree with the State Commission that the issue of subsequent purchase of Machinery by the complainant from Mahalaxmi, and the efforts of the appellant in discrediting the evidence of such purchase, are wholly irrelevant to decide the issue as to how the appellant carried out his obligations under the agreement dated 10.03.2000, which agreement we also find to be reliable in the circumstances. In the absence of any requisite positive evidences in this behalf, therefore, we find no error in the finding of deficiency in the service of the appellant as arrived at by the State Commission. We also find no support for the appellant in the findings in the orders of the Magistrate or of the Appellate Sessions Court in the Criminal case, because the appeal of the respondent was dismissed, inter alia and mainly, on the ground of success of the respondent before the State Commission, and there also is nothing further significant in those orders to persuade us to interfere with the merits of and findings in the order of the State Commission.

7. State Commission has, however, directed the Refund of Rs. 9.5 lakhs with interest at 18%. The grant of 18% interest, which, in our opinion is disproportionate and excessive, is presumably based on the fact that the complainant had obtained a loan bearing interest at 19%. However, we note that the loan was for only Rs. 7 lakh and we also note that the complainant was eligible for some subsidy. In view of the these facts, with a view to making the grant of interest non-excessive and non-disproportionate, we deem it proper to bring down the rate of interest to 12% in place of 18%, which step would, in our opinion, more efficiently and justly balance

the scales. Subject to such modification, the order of the State Commission is upheld. We also note that vide order dated 11.02.2015 the appellant was directed to deposit Rs.9.5 lakh with this commission with liberty to the complainant to withdraw the same after furnishing surety. There is no clarity in the record about the compliance, if any, to this order. The payment of compensation as directed under this order shall accordingly be subject to such compliance by the appellant and withdrawal thereof by the complainant if made in the past.

8. The Appeal is partly allowed in terms of and subject to directions in para 7 above, scaling down the rate of interest from 18% to 12%.

Sd/-

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(A.P. SAHI, J.)
PRESIDENT

Sd/-

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(BHARATKUMAR PANDYA)
MEMBER

pawan/aj